



# Commonwealth of Kentucky

## CONTRACT

### IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

**Doc Description:** Louisville Metro Government

**Doc ID No:** PON2 127 0800010766 1

**Procurement Folder:** 1194804

**Procurement Type:** Grant

**Administered By:** Donna Norton

**Cited Authority:** KRS152.712(2)(D)

**Telephone:** 502-564-7192

**Issued By:** Donna Norton

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LOUISVILLE METRO FINANCE

444 South 5th Street

Suite 400

Louisville

KY 40202

US

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	CONSULTING SERVICES		0.00		0.00000	35,000.00	35,000.00

#### Extended Description

Project Begin Date: 10/15/2008

Project End Date: 6/30/2009

Energy Efficiency Auditor (2008)

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Energy and Enviroment Cabinet

Dept for Energy Development and Independence

12th FL 500 MERO STREET

CAPITAL PLAZA TOWER, 12TH FLOO

FRANKFORT

KY 40601

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Energy and Enviroment Cabinet

Dept for Energy Development and Independence

12th FL 500 MERO STREET

CAPITAL PLAZA TOWER, 12TH FLOO

FRANKFORT

KY 40601

US

**Total Order Amount:** 35,000.00

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**MEMORANDUM OF AGREEMENT**

**BETWEEN THE**

**COMMONWEALTH OF KENTUCKY**

**ENERGY AND ENVIRONMENT CABINET**

**AND THE**

**LOUISVILLE METRO GOVERNMENT**

**PROJECT: ENERGY EFFICIENCY AUDITOR (2008)**

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This MEMORANDUM OF AGREEMENT (hereinafter the "AGREEMENT") is made and entered into this 15th day of October, 2008 by and between the Commonwealth of Kentucky, **Energy and Environment Cabinet, Department for Energy Development and Independence**, 500 Mero Street, Capital Plaza Tower, 12<sup>th</sup> Floor, Frankfort, KY 40601 (hereinafter known as the "CABINET"), and the **Louisville Metro Government**, , Louisville, KY 40202 (hereinafter known as the "RECIPIENT").

**WITNESSETH:**

WHEREAS, the CABINET, whose mission includes promoting renewable energy and energy efficiency, has funding available for this project; and

WHEREAS, the CABINET wishes to enter into a partnership with

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the RECIPIENT to perform the Project tasks described below in this AGREEMENT; and

WHEREAS, the CABINET has the statutory authority through KRS 152.712 to make grants to the RECIPIENT, and the RECIPIENT has complied with all legal requirements necessary to receive the grant;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt, mutuality and sufficiency of which is hereby acknowledged by the parties to this AGREEMENT, the CABINET and RECIPIENT hereby COVENANT AND AGREE as follows:

# **1. OBLIGATIONS OF THE CABINET**

The CABINET shall:

1.1 Reimburse the RECIPIENT a sum up to, but not exceeding, Thirty-Five Thousand dollars (\$35,000) to support the activities outlined in Section 2 from federal funds included in the Fiscal Year 2009 Operating Budget.

1.2 Monitor the RECIPIENT'S performance to assure compliance with this AGREEMENT and completion under the terms herein.

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1.3 Review, comment on, and approve the RECIPIENT'S progress reports and final report, ensuring compliance with the scope of work outlined in Appendix A of this AGREEMENT and any deliverables therein.

1.4 Provide any documentation necessary for successful completion of the Project.

1.5 Make payments to the RECIPIENT under the terms of this AGREEMENT only after completion of the review procedure provided in KRS 45A.705, unless and until alternate actions occur as set out in KRS 45A.695(8).

1.6 Remain in compliance with the provisions of the statute(s) authorizing the grant under this AGREEMENT and customary industry standards.

## **2. OBLIGATIONS OF THE RECIPIENT**

2.1 The RECIPIENT shall perform its obligations for the Project in accordance with Appendix A of this AGREEMENT and customary industry standards.

2.2 Unless provided in the RECIPIENT'S proposal, no contract shall be made by the RECIPIENT with any other party furnishing any of

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the work or services for completion of the scope of work for the Project without the consent and written approval of the CABINET.

2.3 The RECIPIENT shall indemnify and hold harmless the CABINET and the Commonwealth, its officers and employees, from any action or claim against the CABINET or the Commonwealth to the extent resulting from the RECIPIENT'S negligent performance under this AGREEMENT, including liability resulting from the RECIPIENT'S violation of patent or copyright laws.

2.4 The RECIPIENT shall prepare and submit to the CABINET invoices including the funds expended under the AGREEMENT to date. The RECIPIENT shall tender invoices to the CABINET on a quarterly basis, beginning on December 1, 2008 and shall follow the budget attached hereto and made a part of this AGREEMENT as Appendix B.

2.5 The RECIPIENT shall prepare and submit to the CABINET progress reports indicating the work accomplished under the AGREEMENT to date, any problems encountered and actions taken, and a projection of activities for the next reporting period. The RECIPIENT shall tender written reports to the CABINET on a quarterly basis, beginning on December 1, 2008.

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2.6 The RECIPIENT shall maintain supporting documents substantiating expenditures made with Grant funds, and furnish same if required by the CABINET or another agency of the Commonwealth.

**3. ACCESS TO CONTRACTOR'S BOOKS, DOCUMENTS, PAPERS, RECORDS, OR OTHER EVIDENCE DIRECTLY PERTINENT TO THE CONTRACT.**

3.1 The RECIPIENT, as defined in KRS 45A.030(7), agrees that the contracting agency, the Auditor of Public Accounts, and the Legislative Research Commission or their duly authorized representatives shall have access to any books, documents, papers, records, or other evidence which are directly pertinent to this AGREEMENT for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the CABINET, the Finance & Administration Cabinet, the Auditor of public Accounts, or the Legislative Research Commission which are directly pertinent to the AGREEMENT shall be subject to public disclosure unless it is confidential or proprietary in nature or not subject to disclosure under KRS Chapter 61.

**4. MUTUALITY OF OBLIGATIONS**

4.1 The obligations imposed upon the parties to this AGREEMENT are for the benefit of the parties, and the timely fulfillment of

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each and every obligation in accordance with this AGREEMENT is necessary. The failure of either party to fulfill any of its obligations under this AGREEMENT shall constitute a breach of this AGREEMENT, and shall entitle the other party to commence appropriate legal or equitable action to enforce its rights under this AGREEMENT, including bringing an action for recovery of any funds expended hereunder, unless the fulfillment of such obligation is waived or modified by the affected party. All waivers shall be in writing, signed by the affected party, and a waiver of one breach shall not constitute a waiver of any other breach.

4.2 In the event of a material breach by either party to this AGREEMENT, the other party may terminate this AGREEMENT, as provided under applicable law, without further obligation to the other party. The rights of the parties to this AGREEMENT to pursue remedies for breach of any of the provisions hereof shall survive the termination, expiration, or cancellation of this AGREEMENT.

4.3 Except as otherwise provided in this AGREEMENT, the parties to this AGREEMENT shall be solely responsible for any costs incurred in fulfilling their obligations under this AGREEMENT, and no party shall have any claim against the other party for reimbursement of such



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costs, unless said costs are attributable to enforcing compliance under this AGREEMENT or seeking redress from the other party's default under this AGREEMENT.

## **5. METHOD OF PAYMENT**

5.1 The CABINET shall reimburse the RECIPIENT a sum up to, but not exceeding, Thirty-Five Thousand dollars (\$35,000) to conduct the project as outlined in Section 2.

5.2 The RECIPIENT may not charge indirect costs in excess of fifteen (15) percent of total direct costs. An indirect rate ***shall not*** be charged on contractual expenditures. Indirect charges exceeding the fifteen (15) percent shall be considered as cost share provided by the RECIPIENT.

5.3 The RECIPIENT shall not charge indirect charges in agreements that are awarded to provide matching funds for federal or private grants received by the grantee. All matching funds are for cost share and must be used for direct costs only.

5.4 Undisputed portions of invoices will be paid within thirty (30) days.

## **6. TERMS OF AGREEMENT**

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6.1 This AGREEMENT is not effective (and grant funds shall not be distributed) until the Secretary of the Finance & Administration Cabinet, or his authorized designee, has approved the AGREEMENT and until the AGREEMENT has been submitted to the Government Contract Review Committee, if the grant is for \$50,000 or less. If the grant is for more than \$50,000, the AGREEMENT shall be effective upon approval by the Government Contract Review Committee. If the Committee disapproves of the grant, it shall not be effective until the Secretary of the Finance & Administration Cabinet determines that the AGREEMENT shall remain in effect.

6.2 This AGREEMENT shall be effective on October 15, 2008 and shall expire on **June 30, 2009**. If this AGREEMENT is for a term that extends beyond the biennium in which the grant was made, payment and performance obligations for succeeding fiscal years shall be subject to the availability of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance of the AGREEMENT beyond the biennium, the grant for such subsequent year(s) may be canceled and the RECIPIENT shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in

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the price of the supplies or services delivered under the contract.

6.3 For purposes of this AGREEMENT, “biennium” shall be defined as the Commonwealth biennium: July 1 of each even-numbered year through June 30 of the next even-numbered year.

## **7. CONFLICT OF INTEREST LAWS AND PRINCIPLES**

7.1 The RECIPIENT certifies that it is legally entitled to enter into this AGREEMENT with the Commonwealth of Kentucky, and by holding and performing this AGREEMENT that it will not be violating either any conflict of interest statutes (KRS 45A.330-45A.340, 45A.990, and 164.390), or KRS 11A.040 of the Executive Branch Code of Ethics, relating to the employment of former public servants.

## **8. CHOICE OF LAW AND FORUM**

8.1 The laws of the Commonwealth of Kentucky shall govern all questions as to the execution, validity, interpretation, construction, and performance of this AGREEMENT.

8.2 Any legal action which is brought on the basis of this AGREEMENT shall be filed in the Franklin Circuit Court of the Commonwealth of Kentucky.

## **9. PROHIBITION AGAINST DISCRIMINATION BASED ON RACE, RELIGION, COLOR, NATIONAL ORIGIN, SEX, AGE, OR DISABILITY.**

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Only if this AGREEMENT utilizes (in whole or part) federal funds shall the following provisions apply for the entire term of this AGREEMENT:

9.1 The RECIPIENT shall not discriminate against any employee of applicant for employment because of race, religion, color, national origin, sex, or age.

9.2 The RECIPIENT shall comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 01-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity.

9.3 The RECIPIENT shall, in all solicitations or advertisements for employees placed by or on behalf of the RECIPIENT, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, age, or disability.

## **10. CANCELLATION**

10.1 The CABINET shall have the right to terminate and cancel this AGREEMENT at any time not to exceed 30 days written notice served on the RECIPIENT by registered or certified mail.

10.2 If the AGREEMENT is terminated prior to the completion of

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all work enumerated in this AGREEMENT (and accompanying attachments), the RECIPIENT shall reimburse the CABINET for the proportional share of the grant money that has not been expended under the terms of this AGREEMENT.

10.3 If the RECIPIENT negligently fails to perform under the terms of this AGREEMENT, the CABINET may, at its discretion, terminate this AGREEMENT. Upon such termination, the RECIPIENT shall immediately repay the CABINET all grant money expended under this AGREEMENT for services not provided.

#### **11. VIOLATION OF TAX AND EMPLOYMENT LAWS**

11.1 KRS 45A.485 requires the RECIPIENT to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the RECIPIENT within the previous 5-year period of the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wage and hour laws, occupational safety and health laws, unemployment insurance laws, and workers' compensation insurance laws, respectively.

11.2 To comply with the provisions of KRS 45A.485, the

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RECIPIENT shall report any such final determination(s) or violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS section violated, the date of the final determination, and the state agency that issued the final determination.

11.3 KRS 45A.485 also provides that for the duration of the contract the RECIPIENT shall be in continuous compliance with the provisions of those statutes which apply to the RECIPIENT'S operations, and that the RECIPIENT'S failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the RECIPIENT'S disqualification from eligibility for future state contracts for a period of two years.

11.4 The RECIPIENT must initial and check one:

☐ The RECIPIENT **has not** violated any of the provisions of the above statutes within the previous 5-year period; or

☐ The RECIPIENT **has** violated the provisions of one or more of the above statutes within the previous 5-year period and has revealed such final determination(s) of violation(s). **A list of such violations is attached.**

## 12. **AUDIT PROVISIONS**

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12.1 The Finance & Administration Cabinet may inspect the place of business of the RECIPIENT or any subcontractor under the grant awarded (or to be awarded) by the Commonwealth. In accordance with KRS 45A.150, the Finance & Administration Cabinet may audit the books and records of any person who has submitted cost or pricing data under KRS 45.120 at any time until three years from the date of final payment under the prime contract, and by any subcontractor for a period of three years from the date of final payment under the subcontract. Such books and records shall be maintained by the CABINET for a period of three years from the date of final payment under the grant and by any subcontractor for a period of three years from the date of final payment under the subcontract.

12.2 The Finance & Administration Cabinet shall be entitled to audit the books and records of any grant, or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price type contract provided, however, that this provision shall not limit the right to audit as stated above. Such books and records shall be maintained by the RECIPIENT for a period of three years from the date of final payment under the grant and by the subcontractor for a period of three years from

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the date of final payment under the subcontract.

12.3 The RECIPIENT shall place the same audit requirement in any agreement it may have with a subcontractor under this AGREEMENT.

### **13. MISCELLANEOUS PROVISIONS**

13.1 The headings set forth in this AGREEMENT are for convenience of reference only, and the words contained therein shall in no way be intended to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this AGREEMENT.

13.2 The terms and conditions of this AGREEMENT shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns. This provision shall not be construed to permit assignment by any party of any of its rights or duties under this AGREEMENT, which assignment shall be prohibited except with the prior written consent of all parties hereto. Such consent shall not be unreasonably withheld.

13.3 This AGREEMENT sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject matter hereof, and may be modified only by a written instrument duly executed by each of the



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parties hereto.

13.4 No modification of (or change to) any provision in this AGREEMENT shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the RECIPIENT and the CABINET, and incorporated as a written amendment to the AGREEMENT and approved by the Finance & Administration Cabinet as meeting the requirements of the Government Contract Review Committee prior to the effective date of such modification or change. Memoranda of Understanding, written clarification, and correspondence shall not be construed as amendments to the grant.

13.5 If the RECIPIENT finds at any time that existing conditions made modification of the grant necessary, he/she shall promptly report such matters to the CABINET for consideration and decision.

13.6 The RECIPIENT shall perform as expeditiously as is consistent with professional skill and the orderly progress of the work. The schedule shall not be exceeded without cause and notice.

13.7 All notices, requests, demands, waivers, and other communications given as provided in this AGREEMENT shall be in writing, sent by First Class Mail, deemed effective upon mailing, and

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addressed as follows:

If to the CABINET:

D. Brad Stone, Assistant Director  
Dept. for Energy Development and Independence  
500 Mero Street - Capital Plaza Tower, Room 1212  
Frankfort, KY 40601  
Telephone: (502) 564-7192, ext. 435

If to the RECIPIENT:

Cass Harris, Environmental Coordinator  
Louisville Metro Government  
Office of Environmental Policy  
Metro Hall  
527 West Jefferson Street, 6<sup>th</sup> Floor  
Louisville, KY 40202  
(502) 574-8439

13.8 Either party to this Agreement may change the address at which it is to receive notices, requests, demands, waivers, and other communications on the condition that party first provides written notice of that change of address to the other party.

13.9 Nothing in this AGREEMENT shall be interpreted as guaranteeing the rights of any person or governmental agency other than the parties to this AGREEMENT.

13.10 If a provision of this AGREEMENT or the application thereof to any person or circumstance shall be declared to be invalid or

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unenforceable to any extent, the remainder of this AGREEMENT and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the fullest extent permitted by law.

13.11 This AGREEMENT may be executed simultaneously in two or more counterparts each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. It shall not be necessary that any single counterpart hereof be executed by all parties hereto so long as each party executes at least one counterpart.

13.12 Except to the extent otherwise expressly specified in this AGREEMENT, all terms specified herein are in addition to (and not in lieu of) the remedies available to the parties both at law and in equity.

IN WITNESS WHEREOF, the CABINET and the RECIPIENT have executed this AGREEMENT as of the date first above written.

#### **14. APPENDICES**

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## Appendix A Scope of Work

### Louisville Metro Energy Efficiency (E2) Coordinator 2008-09

Louisville Metro shall:

Promote using contract personnel, in coordination with the Department for Energy Development and Independence (DEDI), energy efficiency programs and best energy management practices among businesses and institutions across Metro Louisville, with emphasis on use of Energy Star tools and participation in Louisville Metro E2 programs.

Provide administrative support and coordination to support Louisville Metro's public-private sector E2 partnership and the Louisville Energy Alliance (LEA) and its programs, primarily the Louisville Kilowatt Crackdown Challenge. Support will include but not be limited to coordinating communications among LEA members and among participants in LEA activities, such as the KCC; maintaining KCC records; planning KCC events, etc.

Recruit through direct contact and organizational channels, businesses and organizations to pursue E2 through such actions as benchmarking in Portfolio Manager; becoming an ENERGY STAR Partner; taking the ENERGY STAR Challenge; pursuing the ENERGY STAR Label; and participating in activities sponsored by LEA or Louisville Metro. Act as a technical resource to businesses to assist them in using Energy Star programs and tools.

Develop and maintain an E2 best practices database to assist local businesses.

Assist Louisville Metro in implementing its internal E2 strategy by coordinating schedule, properties, etc.

Report activities quarterly to DEDI.

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Prepare a final report that includes a “lessons learned” discussion to guide the DEDI in similar future efforts and to provide E2 outreach model for other communities.

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**Appendix B**  
**Budget and Reporting Requirements**

**Louisville Metro Government Energy Efficiency (E2) Coordinator**

Milestone	Planned	07/01/08 09/30/08 Qtr 1	10/01/08 12/31/08 Qtr 2	01/01/09 03/31/09 Qtr 3	04/01/09 06/30/09 Qtr 4
1. Promote, in coordination with the KY DEDI, energy efficiency programs and best energy management practices among businesses and institutions across Metro Louisville, with emphasis on use of Energy Star tools and participation in Louisville Metro E2 programs.	1				
2. Provide administrative support and coordination to support Louisville Metro's public-private sector E2 partnership and the Louisville Energy Alliance (LEA) and its programs, primarily the Louisville Kilowatt Crackdown.	1				
3. Recruit and assist businesses and organizations to pursue E2 (i.e., benchmark in Portfolio Manager; become Energy Star Partner; take Energy Star Challenge; pursue Energy Star Label; participate in activities sponsored by LEA or Louisville Metro).	24				
4. Develop and maintain E2 best practices database.	1				
5. Assist Louisville Metro in implementing its internal E2 strategy.	4				
6. Report activities quarterly to DEDI.	4				
7. Prepare final report that includes a "lessons learned" discussion to guide the Office in similar future efforts.	1				

**FINANCIAL:**

CATEGORIES	TOTAL	DEDI	RECIPIENT
Personnel	0	0	0
Fringe	0	0	0
Travel & Training	600	0	600
Supplies	200	0	200
Contractual	35,500	35,000	500

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Other	0	0	0
Indirect	0	0	0
<b>TOTAL</b>	<b>36,300</b>	<b>35,000</b>	<b>1,300</b>

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Approvals:

This contract is subject to the terms and conditions as stated. By affixing signatures below, the parties agree that electronic approvals may serve as electronic signatures. In addition, the parties verify that they are authorized to bind this agreement between parties and that they accept the terms of the agreement.

**Louisville Metro Government:**

\_\_\_\_\_  
**Ted Pullen, PE, Director**  
 Department of Public Works and Assets

\_\_\_\_\_  
 Date

**Kentucky Energy and Environment Cabinet:**

\_\_\_\_\_  
**Leonard K. Peters**  
 Secretary

\_\_\_\_\_  
 Date

\_\_\_\_\_  
**C. Michael Haines**  
 General Counsel

\_\_\_\_\_  
 Date